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Committee on Indian Affairs 1985 - 1986 Activities

A Report to the 50th Legislature

December 1986



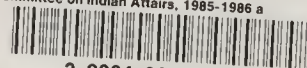
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COMMITTEE ON INDIAN AFFAIRS:

1985 - 1986 ACTIVITIES

A REPORT TO THE 50TH LEGISLATURE

December 1986

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III. The Indian Child Welfare Act	9
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Appendices:

- A. LC 65 (Authorizing state-tribal cooperative agreements for the assessment and collection of any tax, license, or permit lawfully imposed; providing for distribution of revenue collected.)
- B. LC 61 (Requiring the Director of the Department of Social and Rehabilitation Services to appoint an Indian child welfare specialist and defining the specialist's duties.)
- C. LC 63 (Requiring appointment of a person knowledgeable about Indian cultural and family matters to certain foster care review committees.)
- D. LC 118 (Opposing the proposed Indian Health Service regulations limiting eligibility for health care services.)
- E. LC 62 (Creating a legislative committee on Indian affairs; providing for the committee's termination in 1989; appropriating funds for the committee.)

SUMMARY OF RECOMMENDATIONS

The Committee on Indian Affairs recommends that the 50th Montana Legislature consider enacting:

- 1) a bill authorizing state-tribal cooperative agreements for the assessment and collection of any tax, license, or permit lawfully imposed and providing for distribution of the revenue collected (LC 65);
- 2) a bill requiring the Director of the Department of Social and Rehabilitation Services to appoint an Indian Child Welfare Specialist and defining the Specialist's duties (LC 61);
- 3) a bill requiring the appointment of a person knowledgeable about Indian cultural and family matters to certain foster care review boards (LC 63);
- 4) a joint resolution of the Senate and the House of Representatives of the State of Montana opposing the proposed Indian Health Service regulations limiting eligibility for health care services (LC 118); and
- 5) a bill creating a legislative committee on Indian affairs; providing for the committee's termination in 1989; and appropriating funds for the committee (LC 62).

HOUSE BILL NO. 14

AN ACT CREATING A LEGISLATIVE COMMITTEE ON INDIAN AFFAIRS; PROVIDING FOR THE COMMITTEE'S TERMINATION IN 1987; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the 1983 Montana Legislature through adoption of House Joint Resolution No. 19 provided for appointment of an eight-member, equally bipartisan Select Committee on Indian Affairs; and

WHEREAS, House Joint Resolution No. 19 directed the Committee to perform a variety of tasks, including holding hearings to promote better understanding between the tribes and public agencies, acting as a liaison between the Indian people and the Legislature, promoting amicable Indian/non-Indian relations, and keeping informed of state-tribal cooperative agreements; and

WHEREAS, the Legislature appropriated \$7,000 to the Committee to fulfill the mandates of its enabling legislation; and

WHEREAS, within this limited budget, the Committee held five meetings and addressed such topics as involuntary commitment of mentally ill tribal members, state-tribal cooperative agreements, and negotiation of Indian reserved water rights; and

WHEREAS, these meetings were well attended by both tribal representatives and state agency personnel; and

WHEREAS, these meetings provided a forum for both Indian and non-Indian people to discuss their concerns before a legislative body; and

WHEREAS, the Committee succeeded in developing good rapport with many tribal representatives; and

WHEREAS, the Indian people in Montana have indicated support for appointment of a legislative committee to continue the work of the 1983-1984 Select Committee on Indian Affairs; and

WHEREAS, it is in the interest of all Montanans that Indian/non-Indian communications and relations be enhanced; and

WHEREAS, appointment of a legislative committee on Indian affairs would enhance Indian/non-Indian communications, relations, and cooperation.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 8], "committee" means the committee on Indian affairs created in [section 2].

Section 2. **Committee on Indian affairs — appointment and composition.** (1) There is a committee on Indian affairs.

(2) The committee consists of two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker of the house. No more than one member from either house may be members of the same party.

(3) Appointments must be made before final adjournment of a regular session.

Section 3. **Term of office.** Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

Section 4. Vacancies. (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. Officers. The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

Section 6. Meetings and compensation. (1) The committee shall meet as often as the chairman considers it necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

Section 7. Staff assistance. The legislative council shall provide staff assistance to the committee. The legislative council has the same authority of investigation and examination and the same authority to hold hearings on behalf of the committee as it has for other committees under 5-11-106 and 5-11-107.

Section 8. Duties of the committee. The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian/non-Indian relations;

(2) hold hearings both on and off reservations to promote better understanding between the tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as an available liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations; and

(6) report its activities, findings, recommendations, and any proposed legislation to the legislature before each regular legislative session.

Section 9. Termination date. The committee shall terminate upon the convening of the 50th legislature in regular session in 1987.

Section 10. Appropriation. There is appropriated for the biennium ending June 30, 1987, \$6,000 from the general fund to the legislative council for use by the committee on Indian affairs.

Section 11. Effective date. This act is effective on passage and approval.

I. INTRODUCTION

In 1985, House Bill No. 14 (HB 14) was introduced in the Montana Legislature to create a committee on Indian affairs. This legislation, sponsored by the 1983-1984 Select Committee on Indian Affairs, required appointment of a bipartisan panel of four Senate and four House members. The bill also provided for the filling of membership vacancies, election of officers, compensation of members, and committee staff assistance. The duties of the committee as outlined in HB 14 included seeking opinions and information from interested persons and agencies to gain insight into Indian/non-Indian relations, holding hearings both on and off reservations, encouraging participation of Indian people at committee meetings, acting as a liaison between the Indian people and the Legislature, and encouraging tribal-state and tribal-local government cooperation. In addition, HB 14 also appropriated \$12,000 in general fund money for committee expenses and terminated the committee in January 1991.

Before being enacted, HB 14 was revised several times during the legislative process. Committee membership was cut in half from eight to four members, the appropriation was reduced to \$6,000, and the committee was given a two-year, rather than six-year, lifespan. These amendments reflected the Legislature's overall efforts to hold down state spending during poor economic times.

In the summer of 1985, the Committee on Indian Affairs was appointed, becoming the fifth interim legislative committee assigned to study issues relating to the Native Americans in Montana. At its organizational meeting in September, the Committee solicited comments from tribal representatives and other interested

persons on topics to pursue during the 1985-1986 interim. Based on the comments received, the Committee selected the following study topics: alcoholism and alcoholism treatment programs, the Indian Child Welfare Act, and Indian representation on state boards and commissions. Given its limited time and financial resources, the Committee's focus during the interim was on the issues of alcoholism and Indian child welfare matters.

This report summarizes the activities of the Committee on Indian Affairs during the 1985-1986 interim. Additional information on the work of the Committee, including staff reports, Committee correspondence, and meeting minutes, is available through the Montana Legislative Council, Research Division, State Capitol, Helena, Montana 59620.

Numerous organizations and individuals assisted the Committee in gathering information on the topics under study. The Committee extends its appreciation to those persons who took the time to attend and participate in its meetings. In particular, the Committee wishes to thank the following organizations for their assistance:

- Office of the Coordinator of Indian Affairs
- Montana Inter-Tribal Policy Board
- Indian Health Service, Billings Area Office
- Bureau of Indian Affairs, Billings Area Office
- Indian Law Clinic, School of Law, University of Montana
- Montana Department of Institutions
- Montana Department of Social and Rehabilitation Services
- Montana Department of Revenue

II. ALCOHOLISM AND ALCOHOLISM TREATMENT

A. Background on the Issue

Each reservation in Montana has an alcoholism treatment program. The services available through these programs vary; some programs offer a broader continuum of care than others. For example, the Crow program provides only detoxification and aftercare services. In contrast, the Fort Belknap program provides detoxification and aftercare services plus primary residential treatment (i.e., a 28-day structured in-patient program), outpatient care, and school- and community-based prevention services.

In addition to the reservation programs, there are two urban Indian alcoholism treatment facilities in Montana: the Missoula Indian Alcohol and Drug Service and the Butte Indian Alcohol Program. The Missoula program offers outpatient, aftercare, and community-based prevention services. The Butte program offers these same services, plus it operates a halfway house for its clients.

All of the Indian alcoholism treatment programs in the state receive federal funds through the Billings Area Indian Health Service (IHS). For fiscal year 1985, IHS funding for Montana reservation and urban programs amounted to approximately \$1.4 million.

In addition to receiving federal funds, Indian alcoholism treatment programs may receive state funds if the programs are state-approved. These funds are allocated by the state Department of Institutions on a

formula basis to the counties which in turn distribute the money to local treatment programs according to countywide plans for the treatment, rehabilitation, and prevention of chemical abuse. Currently, two reservation programs (Fort Belknap and Blackfeet) and the two urban programs (Butte and Missoula) are state-approved and receive state funding. In fiscal year 1985, these programs combined received approximately \$48,700. State revenue for alcoholism treatment programs comes from the liquor license, beer, and wine taxes.

B. Committee Activities

In January 1986, the Committee on Indian Affairs invited interested persons to a public hearing to examine the issue of alcoholism and Native Americans. The hearing began with some general observations from tribal leaders on the nature and extent of alcoholism among Indian people. Terry Beartusk, Director of the Thunder Child Treatment Center in Sheridan, Wyoming, discussed the need for culturally specific methods for treating the Indian alcoholic. Committee members also heard a progress report on plans to open an Indian adolescent chemical dependency program in the Valley Industrial Park near Glasgow, Montana. In addition, information on federal and state funding for Indian alcoholism treatment programs was presented. Several reservation and urban alcoholism program directors also discussed their programs with the Committee.

During the meeting, a number of participants noted that often efforts to prevent and treat alcoholism among Montana's Indian population are hindered by shortages of funds for alcoholism programs. The Committee,

acknowledging that the Montana Legislature was unlikely to appropriate large sums for alcoholism treatment given the poor economic condition of the state, decided to seek funding from private sources, such as beer and wine producers. Following the January meeting, the Committee sent a letter to the Adolph Coors Company asking if any grants were available through the company to meet some of the financial needs of Indian treatment programs. The company acknowledged receipt of the letter but failed to respond to the Committee's inquiry on the availability of grants.

In connection with its study on alcoholism, the Committee at its August 1986 meeting heard testimony from the state Department of Revenue and the Blackfeet Tribe on the Tribe's recently enacted comprehensive tax code. The code defines the Tribe's tax administration and enforcement powers. It also imposes taxes on liquor, beer, wine, cigarettes, and tobacco and creates a general store license and fee. The Tribe had notified the Department of Revenue that one purpose for enacting the code was to provide a basis for entering into a revenue-sharing agreement with the state for cigarette, tobacco, liquor, and motor fuel taxes.

Under this type of agreement, the state would collect a state tax imposed on commodities purchased on the reservation by non-Indians and an identical tribal tax imposed on commodities purchased on the reservation by Indians. The Tribe and state then would share the tax revenue according to a formula based on tribal and nontribal consumption. The Tribe would receive that revenue assumed under the formula to have been paid by tribal members; the remaining revenue would be retained by the state. The Department told the

Committee that it was interested in working with the Tribe on such an agreement but that statutory authorization was needed to permit the Department to enter into a revenue-sharing arrangement.

At the Committee's final meeting in November 1986, the Department of Revenue presented draft legislation (LC 65) authorizing the Department to enter into revenue-sharing agreements with tribal governments. Sections 1 and 2 of the bill amend current law concerning disposition of revenue from certain fees and taxes. Section 1 provides that this revenue will be deposited as described in 15-1-501, MCA, unless a state-tribal cooperative agreement provides a different procedure for sharing revenue with a tribal government. Section 2, amending 15-1-502, MCA, requires the Department of Revenue to deposit in a suspense account in the state treasury revenue to be shared with tribal governments under a cooperative agreement. Each month the Department must notify the Department of Administration as to the amount to be paid to tribal governments under the agreement. Sections 3 and 4 amend the State-Tribal Cooperative Agreements Act (Title 18, chapter 11, MCA). Section 3 permits a state or local governmental agency to enter into an agreement with a tribal government to assess and collect any tax, license, or permit lawfully imposed by the agency and tribe and to share the revenues from such assessment and collection. Section 4 provides that the agreement must specify the procedure for determining the amount and distribution of the revenue shared with the tribe. Section 5 is a general provision requiring that the tribe's share of the revenue collected by the state under the terms of a cooperative agreement be paid to the tribe before the revenue is distributed according to a statutory formula. For purposes of distributing the revenue

remaining after tribal payments are made, the statutory formula must be applied as if the remainder were the total revenue collected.

The Committee by unanimous vote agreed to sponsor LC 65 during the 1987 legislative session. Members felt that resolving tax issues through cooperative agreements was more efficient and less costly than litigation. Furthermore, such agreements would avoid double taxation of Montana citizens. A copy of LC 65 is contained in Appendix A.

Also during the Committee's final meeting, eight members of the Confederated Salish and Kootenai tribal community presented information on the chemical abuse/dependency program on the Flathead Reservation. As part of the presentation, the group showed a film entitled "The Honour of All," a story about the Alkalai Lake Indians of Canada who, over a fourteen-year period, moved from a 100% alcoholism rate on the reservation to a 95% sobriety rate. The chemical abuse/dependency program on the Flathead Reservation is a comprehensive program involving the tribal community and the schools. The tribal health department offers a continuum of care for alcoholics that includes detoxification, in-patient treatment, intermediate care, out-patient services, and community-based prevention programs. The schools have implemented a drug and alcohol education and prevention program in kindergarten through twelfth grades. Teachers trained in the program present the facts about drugs and alcohol and teach students social skills to enable them to make responsible decisions about chemical substance use. Native American teachings and traditions are an integral component of the prevention program.

III. THE INDIAN CHILD WELFARE ACT

A. Background on the Issue

In 1978, after several years of considering the issues involved, Congress enacted the Indian Child Welfare Act (ICWA). (25 U.S.C. §1901 et seq.). Testimony at Congressional hearings held prior to enactment of the ICWA indicated that, partially through social services agency intervention, Indian families were being broken up at an alarming rate. A steadily increasing number of child abuse and neglect proceedings in the United States involved Indian children. Proponents of the ICWA testified that a lack of understanding of Indian cultural values had generated allegations of child abuse or neglect in cases where none existed. Very often children who were the subject of abuse and neglect proceedings were placed temporarily or permanently in the care of non-Indian families or institutions.

Congress stated, in 25 U.S.C. §1902, that the purposes of the Act were "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." In an effort to achieve these purposes, the ICWA affirms tribal authority over Indian child welfare matters, limits and regulates state court authority over such matters, and restricts the adoption of Indian children.

The Act is an affirmation of tribal authority over Indian child welfare matters in its recognition that Indian tribal courts have exclusive jurisdiction over child custody proceedings (i.e., foster care placement, preadoption placement, adoption, and termination of

parental rights) involving Indian children who have close ties to the reservation. Tribal courts have concurrent jurisdiction with state courts over proceedings involving other Indian children. The Act further enhances tribal authority by authorizing Indian tribes to be involved as parties in Indian child welfare proceedings conducted in state court. The ICWA also supports tribal courts by requiring that full faith and credit be afforded by the United States, by the state, and by other Indian tribes to tribal court orders.

Several provisions of the ICWA limit and regulate state court authority over Indian child welfare matters. In any state court proceeding for foster care placement of or termination of parental rights to an Indian child, the court, upon petition of a parent or the child's tribe, must transfer the case to the jurisdiction of the tribe unless one of the parents objects to the transfer or the court finds good cause not to transfer. If the case is not transferred, the court must follow the directives of the ICWA in conducting the proceeding. The Act directs the court to receive evidence, prior to removal of the child from the home, that active efforts have been made to resolve the alleged family problem. It also requires that a request for removal of a child be supported by testimony of expert witnesses, and it imposes a very high standard of proof in a proceeding for removal of a child. Finally, the ICWA directs state courts to follow statutory adoptive and foster care placement preferences. Placement of the child with an Indian family is preferred.

The Act also includes several provisions designed to protect Indian children from adoptions that are not in

their best interest. First, parental consent to a voluntary adoption may be withdrawn at any time prior to entry of a final decree of adoption. Second, parental consent to adoption may be given no sooner than ten days after the birth of the child. Third, when a decree of adoption of an Indian child is vacated for any reason, the child's biological parent may petition for the return of the child. Fourth, upon reaching age eighteen, any Indian child who has been placed for adoption is entitled to receive information necessary to ensure enrollment in his or her tribe of birth.

B. Committee Activities

In April 1986, the Committee held a public hearing on the ICWA. The Committee heard testimony from representatives of state and tribal social services agencies, the Bureau of Indian Affairs, and tribal and state courts who described their responsibilities under the Act, discussed problems encountered in implementing the Act, and suggested solutions for addressing these problems.

Meeting participants identified several problem areas including insufficient funding for child welfare services, lack of coordination among state, federal, and tribal agencies in providing services, refusal to extend full faith and credit to tribal court orders as required under the ICWA, and inconsistencies among counties in handling Indian child welfare matters. Proposed solutions included drafting a state Indian child welfare act, urging the Montana Supreme Court to adopt rules concerning implementation of the ICWA, creating a position of Indian Child Welfare Specialist

within state government, and requiring appointment of a person knowledgeable in Indian culture to foster care review boards.

Two issues, which received considerable discussion during the meeting, were later addressed in a state Attorney General's opinion issued in July 1986 (Opinion No. 76, Vol. no. 41). The first issues concerned the meaning of the term "exclusive jurisdiction" as used in the Act. The issue was whether the ICWA, by affirming the tribes' exclusive jurisdiction over Indian children residing on the reservation, prevented the state from providing services to these children. The Attorney General found that the tribes' exclusive jurisdiction in this area did prohibit the state from providing services unless a state-tribal cooperative agreement was in place authorizing the state to do so.

The second issue concerned the meaning of the term "transfer of jurisdiction" as used in the ICWA. The issue was whether the state must continue to provide services to an Indian child residing off the reservation when a child custody proceeding is transferred from state to tribal court. The Attorney General again found that when a case is transferred, the tribes' exclusive jurisdiction over the child prohibits the state from providing services.

In discussions following the April hearing, the Committee concluded that a thorough understanding of the ICWA among state district court judges was essential if the Act was to be implemented to best serve the needs of Montana's Indian children. To foster this understanding, the Committee contacted District Judge John McCarvel, president of the Montana

Judges Association, and offered to make a presentation on the ICWA at the judges' annual conference. Judge McCarvel accepted the Committee's offer.

In October 1986, a four-member panel traveled to Whitefish, Montana to address the judges on the ICWA. Before the presentation began, Committee staff distributed folders to the judges containing materials on the ICWA. Senator Dick Pinsoneault opened the presentation with some introductory comments on the Indian Affairs Committee. Lois Menzies, Committee researcher, then gave a brief overview of the activities of past committees and outlined the topics currently under study by the Committee. Staff attorney Brenda Desmond provided background information on passage of the ICWA, reviewed the significant features of the Act, and discussed the role of district courts under the Act. Don Dupuis, Chief Judge of the Confederated Salish-Kootenai Tribes, concluded the presentation by discussing the purpose and function of tribal courts. A question and answer period followed. Based on comments made by several judges, the presentation was well received and informative.

At its final meeting in November 1986, the Committee considered two bills concerning Indian child welfare matters. The concepts embodied in this legislation originated from testimony presented at the April public hearing on the ICWA. The Committee, by unanimous vote, agreed to sponsor both bills during the 1987 legislative session.

The first bill, LC 61, requires the director of the state Department of Social and Rehabilitation Services to appoint an Indian Child Welfare Specialist. The

appointment must be made from a list of five qualified Indian applicants agreed upon by the governing bodies of the respective Indian tribes in Montana. (This same procedure is used to appoint the Coordinator of Indian Affairs. See 2-15-1813, MCA.) The bill defines the duties of the specialist, which include providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare, assisting in negotiating state-tribal cooperative agreements to provide foster care services to Indian children, and conducting training seminars on implementing the ICWA. In recommending the bill to the Legislature, the Committee felt that the specialist would serve as a technical expert in Indian child welfare matters and act as a liaison between tribal and state/local governmental agencies in implementing the ICWA. The Committee anticipated that the specialist position would be full-time and dedicated solely to Indian child welfare matters. A copy of LC 61 is contained in Appendix B.

The second bill, LC 63, concerns membership on foster care review boards. Montana law requires the youth court judge in each judicial district, in consultation with the Department of Social and Rehabilitation Services, to appoint a foster care review board (41-3-1115, MCA). The board, consisting of five to seven members, reviews the foster care status of children and reports its findings and recommendations regarding these children to the youth court and the Department of Social and Rehabilitation Services. LC 63 requires appointment of a person knowledgeable about Indian cultural and family matters in each judicial district that encompasses a county with an Indian population of 400 or more according to the latest

federal decennial census. This provision would require the appointment to be made in those judicial districts encompassing part of an Indian reservation (Districts 4, 9, 11, 12, 13, 15, 16, 17, and 20) plus three judicial districts that do not encompass a reservation but do encompass an urban area with a substantial Indian population (Districts 1 (Helena), 2 (Butte), and 8 (Great Falls)). The Committee felt that appointment of a person knowledgeable in Indian cultural and family matters would be particularly beneficial when the foster care placement of an Indian child is reviewed by a board. A copy of LC 63 is contained in Appendix C.

IV. OTHER ACTIVITIES

A. Proposed Indian Health Service Regulations

During the Committee's August 1986 meeting, Donald L. Clayborn, State Coordinator of Indian Affairs, asked the Committee to sponsor a joint resolution opposing the proposed Indian Health Service (IHS) regulations concerning eligibility for health care services. Under the proposed regulations, a person would be eligible for IHS health care services if he or she is (1) a member of, or eligible for membership in, a federally recognized Indian tribe; (2) of one-quarter or more Indian or Alaska Native ancestry; and (3) residing within a designated health service delivery area. If a person is not a tribal member or eligible for tribal membership, then he or she must be of one-half or more Indian or Alaska Native ancestry and reside within a designated health service delivery area. Currently, services are available to any person of Indian descent who belongs to an Indian community served by an IHS health facility and program; no particular degree of blood quantum is required.

Mr. Clayborn criticized the proposed regulatory changes as unlawful interference by a federal agency with the tribes' authority to determine their own membership. In addition, the proposed regulations would limit medical care within tribal communities, further deteriorating health conditions among Indian people. He speculated that many people denied IHS services would go without treatment because they could not afford private medical care. Others would seek treatment through state or county agencies. This

influx of new patients would have a considerable financial impact on the state.

At its last meeting in November 1986, the Committee agreed with Mr. Clayborn's concerns and voted to introduce during the 1987 session a joint resolution opposing the proposed IHS regulations. A copy of the resolution (LC 118) is contained in Appendix D.

B. Native Americans Legal Materials Proposal

In August 1986, personnel at the Montana State Law Library contacted the Committee to request its support for a proposal to make Native American legal materials more generally available in Montana. Currently, materials concerning Indian law (e.g., federal treaties, executive orders, administrative rules, court decisions, tribal constitutions and ordinances) are held in libraries throughout the state. However, locating these materials is often difficult or impossible because there is no one source list to which a researcher or librarian can refer. To improve this situation, the law library, together with five other libraries in the state, decided to apply for a private grant through the Fred Meyer Trust to compile a bibliography of those Indian law materials held in Montana. In addition to producing the bibliography, the libraries intended to use grant money to purchase missing materials.

The Committee, at its August meeting, agreed to support the libraries' proposal. Members commended the group for seeking private funds for its project at a time when Montana's economic climate prevented the Legislature from funding many worthwhile programs. The

Committee sent a letter of support to the law library following the meeting.

Reserved Water Rights Compact Commission

One of the topics under study by the 1984-1985 Select Committee on Indian Affairs was the activities of the Reserved Water Rights Compact Commission. The Commission, statutorily created in 1979, is authorized to negotiate compacts with the Indian tribes and certain federal agencies for the division and apportionment of reserved water rights. In 1985, the Commission successfully negotiated a compact with the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The compact was later ratified by the Legislature and the Fort Peck Tribes and signed by the Governor. The nine-member Commission is scheduled to terminate July 1, 1987.

At the Committee's last meeting in November 1986, the Commission's chairman, Senator Jack Galt, briefed members on the Commission's activities. Senator Galt reported that for the past two years, the Commission has maintained communications and met with representatives of all the Montana tribes and with the Turtle Mountain Band of the Chippewa Tribe in North Dakota. In addition, much the Commission's time and effort during this period was directed toward securing agreements with the federal agencies claiming reserved water rights in Montana. Senator Galt noted that the Legislature's Water Policy Committee would be sponsoring legislation during the 1987 session to extend the life of the Commission for six years until July 1, 1993. He asked the Committee to support the legislation. The Committee agreed to do so.

D. Creating a Committee on Indian Affairs

Feedback from tribal representatives during the 1985-1986 interim indicated that the Committee had served an important role as a forum for discussing the concerns of Indians and non-Indians and as a liaison between the Indian people and state government. Committee members, believing that Indian/non-Indian communications, relations, and cooperation were enhanced by having a legislative committee on Indian affairs, agreed to sponsor legislation (LC 62) providing for appointment of a committee to succeed them.

LC 62 requires the President of the Senate and the Speaker of the House each to appoint two members to the committee; no more than one member from either house may be members of the same party. The bill provides for the filling of vacancies, election of officers, compensation for members, and committee staff assistance. It also outlines the duties of the committee and terminates the committee in January 1989. In addition, a \$6,000 general fund appropriation is included in the bill to cover committee expenses for the 1987-1988 interim. A copy of LC 62 is contained in Appendix E.

LM87/6308c

APPENDIX A

LC 0065/01

50th Legislature

LC 0065/01

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INTRODUCED BY _____

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BY REQUEST OF THE DEPARTMENT OF REVENUE

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A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING
STATE-TRIBAL COOPERATIVE AGREEMENTS FOR ASSESSMENT AND
COLLECTION OF ANY TAX, LICENSE, OR PERMIT LAWFULLY IMPOSED;
PROVIDING FOR DISTRIBUTION OF REVENUE COLLECTED; AND
AMENDING SECTIONS 15-1-501, 15-1-502, 18-11-103, AND
18-11-104, MCA."

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1 operation of the Montana Alcoholic Beverage Code; and

2 (4) thirty-three thirty-three and one-third percent of

3 the total collections of the oil severance tax under chapter

4 36 shall be deposited into the local government block grant

5 account within the state special revenue fund. After the

6 distribution provided for in 15-36-112, the remainder of the

7 oil severance tax collections shall be deposited in the

8 general fund."

9 Section 2. Section 15-1-502, MCA, is amended to read:

10 "15-1-502. Suspense account for receipts, and refunds,

11 and revenue to be shared under state-tribal agreement. The

12 department of revenue shall establish a suspense account in

13 the state treasury for the purpose of conveniently

14 processing receipts, and for paying refunds for overpayments

15 of inheritance taxes collected by county treasurers and all

16 other taxes collected by the department, and for payments of

17 revenue to be shared with tribal governments under a

18 state-tribal cooperative agreement entered into pursuant to

19 Title 18, chapter 11. All moneys received by the department

20 shall be temporarily credited by the state treasurer to the

21 department's suspense account. Each month the department of

22 revenue shall send to the department of administration a

23 distribution sheet designating the amount to be deposited in

24 each treasury fund and in each account and the amount to be

25 paid to tribal governments under a state-tribal cooperative

1 agreement."

2 Section 3. Section 18-11-103, MCA, is amended to read:

3 "18-11-103. Authorization to enter agreement --

4 general contents. (1) Any one or more public agencies may

5 enter into an agreement with any one or more tribal

6 governments to:

7 (a) perform any administrative service, activity, or

8 undertaking that any of the public agencies or tribal

9 governments entering into the contract is authorized by law

10 to perform; and

11 (b) assess and collect any tax, license, or permit

12 lawfully imposed by the tribal government and public

13 agencies, and to share the revenues from such assessment and

14 collection.

15 (2) The agreement shall be authorized and approved by

16 the governing body of each party to the agreement.

17 (3) The agreement shall set forth fully the powers,

18 rights, obligations, and responsibilities of the parties to

19 the agreement."

20 Section 4. Section 18-11-104, MCA, is amended to read:

21 "18-11-104. Detailed contents of agreement. The

22 agreement authorized by 18-11-103 shall specify the

23 following:

24 (1) its duration;

25 (2) the precise organization, composition, and nature

1 of any separate legal entity created thereby;

2 (3) the purpose of the agreement;

3 (4) the manner of financing the agreement and
4 establishing and maintaining a budget therefor;

5 (5) the method to be employed in accomplishing the
6 partial or complete termination of the agreement and for
7 disposing of property upon such partial or complete
8 termination;

9 (6) provision for administering the agreement, which
10 may include creation of a joint board responsible for such
11 administration;

12 (7) the manner of acquiring, holding, and disposing of
13 real and personal property used in the agreement;

14 (8) when an agreement involves law enforcement:

15 (a) the minimum training standards and qualifications
16 of law enforcement personnel;

17 (b) the respective liability of each public agency and
18 tribal government for the actions of law enforcement
19 officers when acting under the provisions of an agreement;

20 (c) the minimum insurance required of both the public
21 agency and the tribal government; and

22 (d) the exact chain of command to be followed by law
23 enforcement officers acting under the provisions of an
24 agreement; and

25 (9) when an agreement involves the assessment and

1 collection of any tax, license, or permit, the procedure for
2 determining the amount and distribution of the revenue
3 shared with the tribal government; and

4 ~~†9†~~(10) any other necessary and proper matters."

5 NEW SECTION. Section 5. Agreements on taxation --
6 tribal government share deducted before calculation of other
7 distributions. In calculating the distribution of the
8 revenue from any tax, license, or permit collected pursuant
9 to a state-tribal cooperative agreement, the tribal
10 government shall receive its share as provided in the
11 agreement, notwithstanding a contrary statutory distribution
12 formula. For purposes of distribution of the remainder, the
13 statutory distribution formula must apply as if the amount
14 remaining, after the tribal government receives its share,
15 were the total revenue collected from the tax, license, or
16 permit.

17 NEW SECTION. Section 6. Codification instruction.
18 Section 5 is intended to be codified as an integral part of
19 Title 15, chapter 1, part 5, and the provisions of Title 15,
20 chapter 1, part 5, apply to section 5.

21 NEW SECTION. Section 7. Extension of authority. Any
22 existing authority of the department of revenue to make
23 rules on the subject of the provisions of this act is
24 extended to the provisions of this act.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DIRECTOR
6 OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO
7 APPOINT AN INDIAN CHILD WELFARE SPECIALIST AND DEFINING THE
8 SPECIALIST'S DUTIES."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Indian child welfare specialist. The
12 director of the department shall appoint an Indian child
13 welfare specialist from a list of five qualified Indian
14 applicants agreed upon by the governing bodies of the
15 respective Indian tribes of the state. The duties of the
16 specialist include:

17 (1) developing Indian foster homes and other Indian
18 placement resources;

19 (2) providing technical advice to tribal, state, and
20 county agencies and district courts on matters pertaining to
21 Indian child welfare;

22 (3) providing assistance in negotiating cooperative
23 agreements to provide foster care services to Indian
24 children;

25 (4) conducting training seminars on implementing the

1 Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.);
2 (5) applying for and accepting grants and other funds
3 for Indian child welfare activities;
4 (6) developing and maintaining a list of attorneys to
5 represent indigent parents and Indian custodians in Indian
6 child welfare proceedings;
7 (7) making recommendations to the department on
8 legislation and rules concerning Indian child welfare
9 matters; and
10 (8) performing other duties concerning Indian child
11 welfare matters as determined by the director.
12 Section 2. Codification instruction. Section 1 is
13 intended to be codified as an integral part of Title 53,
14 chapter 4, part 1, and the provisions of Title 53, chapter
15 4, part 1, apply to section 1.

-End-



APPENDIX C

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING APPOINTMENT
6 OF A PERSON KNOWLEDGEABLE ABOUT INDIAN CULTURAL AND FAMILY
7 MATTERS TO CERTAIN FOSTER CARE REVIEW COMMITTEES; AMENDING
8 SECTION 41-3-1115, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 41-3-1115, MCA, is amended to read:
12 "41-3-1115. Foster care review committee. (1) In every
13 judicial district the youth court judge, in consultation
14 with the department, shall appoint a foster care review
15 committee. The members of the committee must be willing to
16 act without compensation. The committee shall be composed of
17 not less than five or more than seven members. The members
18 shall include:

- 19 (a) a representative of the department;
- 20 (b) a representative of the youth court;
- 21 (c) someone knowledgeable in the needs of children in
22 foster care placements who is not employed by the department
23 or the youth court;
- 24 (d) a representative of a local school district; and
- 25 (e) if the judicial district encompasses a county with

1 an Indian population of 400 or more according to the latest
2 federal decennial census, someone, preferably an Indian
3 person, knowledgeable about Indian cultural and family
4 matters; and
5 (f) if there is one, the foster parent of the child
6 whose care is under review. The foster parent's appointment
7 is effective only for and during that review.

8 (2) When a child is in foster care under the
9 supervision of the department or the youth court or if
10 payment for care is made pursuant to 41-3-1122 or
11 41-3-1121(2), the committee shall conduct a review of the
12 foster care status of the child. The review must be
13 conducted within a time limit established by the department.
14 The time limit must comply with federal law and may not be
15 later than the 12-month anniversary date of the child's
16 placement into foster care.

17 (3) The department shall provide the committee with
18 guidelines for operation of the committee. Within 30 days of
19 the foster care review, the committee shall provide the
20 youth court and the department a written report of its
21 findings and recommendations for further action by the youth
22 court or the department.

23 (4) The department shall adopt rules necessary to
24 carry out the purposes of this section.

25 (5) Because of the individual privacy involved,

1 meetings of the committee, reports of the committee, and
2 information on individuals' cases shared by committee
3 members is confidential and subject to the confidentiality
4 requirements of the department.

5 (6) The committee is subject to the call of the youth
6 court judge to meet and confer with him on all matters
7 pertaining to the foster care of a child before the youth
8 court."

-End-

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS

4
5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
6 REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE
7 PROPOSED INDIAN HEALTH SERVICE REGULATIONS LIMITING
8 ELIGIBILITY FOR HEALTH CARE SERVICES.

9
10 WHEREAS, tribal governments are recognized as sovereign
11 entities by Congress and the federal government and a unique
12 relationship exists between federal agencies and tribal
13 governments; and

14 WHEREAS, the State of Montana recognizes the existing
15 trust relationship between federal agencies and tribal
16 governments; and

17 WHEREAS, the Indian Health Service was established
18 under federal law to provide a trust service to Montana's
19 tribal governments and its Native American population; and
20 WHEREAS, the Indian Health Service has proposed
21 regulations to restrict tribal service programs to those
22 members of an Indian tribe who have one-fourth or more
23 Indian blood and who satisfy certain residency requirements;

24 and

25 WHEREAS, these proposed regulations infringe upon

1 tribal self-government and tribal authority to determine
2 tribal membership and conflict with the federal government's
3 trust relationship with Indian tribes; and

4 WHEREAS, the trust relationship and the limits of
5 tribal authority can be altered only by congressional
6 action; and

7 WHEREAS, these proposed regulations will further limit
8 health care to tribal communities at a time when the
9 Congressional Office of Technology Assessment has reported
10 that Indians have less access to adequate health care than
11 any group in America today; and

12 WHEREAS, these proposed regulations will in part shift
13 the responsibility for tribal health care from the Indian
14 Health Service to state and county agencies that are
15 generally less knowledgeable about tribal health concerns;
16 and

17 WHEREAS, the State of Montana is not adequately funded
18 to bear such an influx of new patients; and

19 WHEREAS, there may be many tribal members denied
20 adequate health care, with consequent suffering and early
21 death.

22
23 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
24 OF REPRESENTATIVES OF THE STATE OF MONTANA:

25 (1) That the Montana Legislature views the Indian

1 Health Service's rulemaking activity as a violation of
2 federal trust responsibility and federal law and beyond its
3 authority as an administrative agency.

4 (2) That the Montana Legislature opposes the proposed
5 Indian Health Service regulations limiting eligibility for
6 health care services because such regulations inhibit the
7 delivery of adequate health care to tribal members.

8 (3) That the Secretary of State transmit a copy of
9 this resolution to each member of the Montana Congressional
10 Delegation and to the Secretary of the United States
11 Department of Health and Human Services.

-End-

APPENDIX E

LC 0062/01

50th Legislature LC 0062/01

1 WHEREAS, these meetings were well attended by both
2 tribal representatives and state agency personnel; and
3 WHEREAS, these meetings provided a forum for both
4 Indian and non-Indian people to discuss their concerns
5 before a legislative body; and
6 WHEREAS, the Committee succeeded in developing good
7 rapport with many tribal representatives; and
8 WHEREAS, the Indian people in Montana have indicated
9 support for appointment of a legislative committee to
10 continue the work of the 1984-85 Committee on Indian
11 Affairs; and
12 WHEREAS, it is in the interest of all Montanans that
13 Indian/non-Indian communications and relations be enhanced;
14 and
15 WHEREAS, appointment of a legislative committee on
16 Indian affairs would enhance Indian/non-Indian
17 communications, relations, and cooperation.
18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
20 Section 1. Definition. As used in [sections 1 through
21 9], "committee" means the committee on Indian affairs
22 created in [section 2].
23 Section 2. Committee on Indian affairs -- appointment
24 and composition. (1) There is a committee on Indian affairs.
25 (2) The committee consists of two members of the

1 INTRODUCED BY _____ BILL NO. _____
2
3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A LEGISLATIVE
6 COMMITTEE ON INDIAN AFFAIRS; PROVIDING FOR THE COMMITTEE'S
7 TERMINATION IN 1989; APPROPRIATING FUNDS FOR THE COMMITTEE;
8 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9
10 WHEREAS, the 1985 Montana Legislature, through adoption
11 of House Bill No. 14, provided for appointment of a
12 four-member, equally bipartisan Committee on Indian Affairs;
13 and
14 WHEREAS, House Bill No. 14 directed the Committee to
15 perform a variety of tasks, including holding hearings to
16 promote better understanding between the tribes and public
17 agencies, acting as a liaison between the Indian people and
18 the Legislature, and promoting amicable Indian/non-Indian
19 relations; and
20 WHEREAS, the Legislature appropriated \$6,000 to the
21 Committee to fulfill the mandates of its enabling
22 legislation; and
23 WHEREAS, within this limited budget, the Committee held
24 seven meetings and addressed such topics as alcoholism and
25 the Indian Child Welfare Act of 1978; and

1 senate, appointed by the president of the senate, and two
 2 members of the house of representatives, appointed by the
 3 speaker of the house. No more than one member from either
 4 house may be members of the same party.

5 (3) Appointments must be made before final adjournment
 6 of a regular session.

7 Section 3. Term of office. Appointments to the
 8 committee are for 2 years. A member of the committee serves
 9 until his term of office as a legislator is ended or his
 10 successor is appointed, whichever occurs first.

11 Section 4. Vacancies. (1) A vacancy occurring during a
 12 legislative session must be filled in the same manner as the
 13 original appointment.

14 (2) A vacancy occurring when the legislature is not in
 15 session must be filled by the selection of a member of the
 16 appropriate house and political party by the remaining
 17 members of the committee.

18 (3) An appointment to the committee under this section
 19 is for the unexpired term of the original member.

20 Section 5. Officers. The committee shall elect one of
 21 its members as chairman and may elect other officers it
 22 considers necessary.

23 Section 6. Meetings and compensation. (1) The
 24 committee shall meet as often as the chairman considers it
 25 necessary during and between legislative sessions.

1 (2) Committee members are entitled to receive
 2 compensation and expenses as provided in 5-2-302.

3 Section 7. Staff assistance. The legislative council
 4 shall provide staff assistance to the committee. The
 5 legislative council has the same authority of investigation
 6 and examination and the same authority to hold hearings on
 7 behalf of the committee as it has for other committees under
 8 5-11-106 and 5-11-107.

9 Section 8. Duties of the committee. The committee
 10 shall:

11 (1) seek opinions of and information from Indian
 12 tribes, Indian tribal organizations, state agencies, local
 13 governments, non-Indians living on or near Indian
 14 reservations, and other interested persons and agencies to
 15 gain insight into Indian/non-Indian relations;

16 (2) hold hearings both on and off reservations to
 17 promote better understanding between the tribes and public
 18 agencies and to improve both the Indian people's knowledge
 19 of the structure of state agencies and the legislative
 20 process and the non-Indian people's knowledge of tribal
 21 government and institutions;

22 (3) encourage and foster participation of Indian
 23 people at its meetings;

24 (4) act as an available liaison between the Indian
 25 people and the legislature;

1 (5) encourage tribal-state and tribal-local government
2 cooperation and otherwise promote amicable Indian/non-Indian
3 relations; and

4 (6) report its activities, findings, recommendations,
5 and any proposed legislation to the 51st legislature.

6 Section 9. Termination date. The committee shall
7 terminate upon the convening of the 51st legislature in
8 regular session in 1989.

9 Section 10. Appropriation. There is appropriated for
10 the biennium ending June 30, 1989, \$6,000 from the general
11 fund to the legislative council for use by the committee on
12 Indian affairs.

13 Section 11. Effective date. This act is effective on
14 passage and approval.

-End-



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